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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL.

STATEMENT OF JURISDICTION.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Counsel for Appellant.

TABLE OF CASES CITED.

	Page
Atchison, T. & S. F. Ry. Co. v. State, 28 Okla. 797	7
Bacon v. Rutland R. Co., 232 U. S. 134	8
Charles Wolf Packing Co. v. Court of Industrial Relations, 262 U. S. 522	6
Cline v. Frink Dairy Co., 274 U. S. 445	6
Connally v. General Construction Co., 269 U. S. 285	6
County Commissioners, In re, 22 Okla. 435	7
International Harvester Co. v. Kentucky, 234 U. S. 216	6
Ohio Oil Company v. Indiana, 177 U. S. 209	7
Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290	8
Pacific Tel. & Tel. Co. v. Cushman, 292 Fed. 930	8
Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 200	8
Pennsylvania Coal Co. v. Mahon, 260 U. S. 393	7
Peterson v. Grayce Oil Co., 37 S. W. (2d) 367	7
Prentis v. Atlantic Coast Line Co., 211 U. S. 210	8
Shawnee Gas & Electric Co. v. State, 31 Okla. 505	7
St. Louis & S. F. R. Co. v. State, 28 Okla. 802	7
Tyson & Bro. v. Banton, 273 U. S. 418	6
United States v. Cohen Grocery Co., 255 U. S. 89	6
Williams v. Standard Oil Co., 278 U. S. 235	6
West v. Kansas Natural Gas Co., 221 U. S. 229	7

STATUTES CITED.

Constitution of the United States, 14th Amendment, and Sec. 8 of Article 1	2, 3
Judicial Code, Sec. 266 (U. S. C., 380)	4, 5
Oklahoma Compiled Statutes, 1921, Sec. 3498	3
7954	3, 9
7955	3, 9, 6
7956	3, 9, 10
7957	3, 9, 10, 11
7958	3, 9, 11
7959	3, 9, 11, 12
7960	3, 9, 12
7961	3, 9, 12
7962	3, 9, 12, 13
7963	3, 9, 13

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, A CORPORATION, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL., APPELLEES.

APPELLANT'S STATEMENT DISCLOSING THE BASIS ON WHICH IT CONTENDS THIS COURT HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE OF THE COURT BELOW (SECTION 1 OF THIS COURT'S RULE 12).

The appellant, in support of the jurisdiction of this Court to review on appeal the decree below, respectfully states:

First.

Appellant, as plaintiff below, commenced this action in the United States Court for the Western District of Oklahoma to enjoin the enforcement of (*a*) the Oklahoma Oil Curtailment Act, which in substance undertakes to vest the Corporation Commission of that State "with power to investigate and determine from time to time the actual value of such crude oil or petroleum by standards herein provided," upon determination of which by the Corporation Commission "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" is prohibited, which in effect vests the Corporation Commission with power to determine the price at which a producer of crude oil in Oklahoma must sell his oil upon production, and (*b*) to enjoin the Corporation Commission of Oklahoma from making or enforcing various rules, regulations and "Proration Orders" made by it, prohibiting the appellant from taking from its oil wells, and others similarly situated from taking from their oil wells, more than a small percentage of the capacity of the oil production thereof, on the ground that said Curtailment Act within itself, and the rules, regulations and orders of the Corporation Commission complained of, whether independent thereof or dependent thereon, violate the provisions of the Fourteenth Amendment to the Constitution of the United States in that they and each of them deprive appellant of (1) its liberty

of contract, (2) its property without due process of law, and (3) the equal protection of the laws, and are violative of the provisions of the commerce clause of Section 8 of Article I of the Constitution of the United States, and when put in operation as here enforced are in violation of the Sherman Anti-Trust Act of the United States. (See appellant's Third Amended and Supplemental Bill of Complaint. Certified unprinted record on file with Clerk, Vol. I, pp. 15 to 47, inc.)

NOTE.—The record in this cause (No. 485, Oct. Term 1931) has not been and will not be printed to completion within thirty days after the 26th day of October, 1931, the date same was filed with the Clerk of this Court, which makes it necessary throughout this Statement of Jurisdiction in the citation of parts thereof, to use the page numbers of the certified unprinted record, as on file in this Court.

The pertinent sections of the Curtailment Act, as contained in Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes, 1921 (same being Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Act approved February 11, 1915), are fully set forth in Appendix "A" hereto.

For a more definite statement of the constitutional questions raised by the pleadings and the record, reference is here made to *"Appellant's Definite Statement of the Points upon Which It Relies"* for a reversal of this case, set forth in Appendix "B" hereto.

Section 3498, Oklahoma Compiled Statutes, 1921, provides that "Any corporation, person or firm may

be fined by the Corporation Commission such sum, not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules or requirements; and each day's continuance of such violation, after due service upon such corporation, person or firm of the order or requirement of the Commission, shall be a separate offense."

Second.

On January 2, 1931, appellant's application for a temporary injunction was heard before a three-judge court organized under the provisions of Section 266 of the Judicial Code as amended (U. S. C. 380), and denied on the 9th day of February, 1931, in an opinion with two judges concurring and one dissenting (Rec. Print No. 122, Oct. Term, 1931, Vol. I, p. 172).

Third.

From that order an appeal was petitioned (Rec., Print No. 122, Oct. Term, 1931, p. 336) and allowed (Rec., Print No. 122, Oct. Term, 1931, p. 341) to this Court on April 22nd, 1931, and docketed here as No. 122, October Term, 1931.

Fourth.

Jurisdiction of that appeal was sustained by this Court on October 19th, 1931.

Fifth.

The trial of the appellant's cause upon final hearing upon the merits, before three judges, was had on June

29th, 1931 (Rec., Vol. I, p. 410), and June 30th, 1931 (Rec., Vol. I, p. 460), and finally argued and submitted on August 5, 1931 (Rec., Vol. I, p. 342).

Sixth.

On September 1, 1931 (Rec., Vol. I, p. 308), the majority revised opinion of said court, and on October 17, 1931 (Rec., Vol. I, p. 309), the dissenting revised opinion, were respectively filed in said cause.

Seventh.

On September 11, 1931, the findings of fact (Rec., Vol. I, p. 236), conclusions of law (Rec., Vol. I, p. 285), and final decree (Rec., Vol. I, p. 342) of the three-judge court, were filed.

Eighth.

On September 23, 1931, the appellant's petition for appeal was filed (Rec., Vol. I, p. 561) and on October 17, 1931, order allowing same was entered (Rec., Vol. I, p. 576), bond given (Rec., Vol. I, p. 577, omitted in printing), appeal perfected, and the record lodged in this Court on October 26, 1931.

Ninth.

Under Section 266 of the Judicial Code, amended (U. S. C. 380), "an appeal may be taken direct to" this Court from a final decree denying an application for permanent injunction, in a case of this character, to-wit, an action to enjoin the enforcement, operation and execution of a State statute and rules of the State Commission.

Tenth:

That it is unnecessary to cite decisions of this Court upholding its jurisdiction in this case, as Section 266 of the Judicial Code plainly does so, but in order to show that the appeal is not frivolous we refer to the fact that one of the judges dissented; that Section 2 of the Act (Section 7955, Oklahoma Compiled Statutes 1921) is a price-fixing section and void upon the authority of *Williams* v. *Standard Oil Company,* 278 U. S. 235, 73 Law Ed. 287; that Section 2 of the Act is not a separable part thereof and the Act, as a result thereof, must fall as a whole, but that if Section 2 is separable, the remaining sections of said Act are too vague and uncertain to constitute due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States in that the statute does not define or prescribe any standard by which the Corporation Commission could define *economic* waste, *underground* waste, and waste incident to the production of crude oil or petroleum in excess of transportation or *marketing facilities* or *reasonable market demand* (*Connally* v. *General Construction Co.,* 269 U. S. 385; *Cline* v. *Frink Dairy Co.,* 274 U. S. 445; *International Harvester Co.* v. *Kentucky,* 234 U. S. 216; *United States* v. *Cohen Grocery Co.,* 255 U. S. 89); that the production and refining of crude oil is not a public or quasi-public business (*Tyson & Bro.* v. *Banton,* 273 U. S. 418; *Charles Wolf Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522); that appellant is a producer, refiner and marketer of crude oil and its products, and controls ample transportation

facilities for use in interstate as well as intrastate commerce.

Eleventh.

Appellant not having wasted oil or caused the actual waste of oil, its right to produce the natural flow of oil from its wells is protected by the Fourteenth Amendment to the Constitution of the United States, or, as said by this Court in *West* v. *Kansas Natural Gas Company*, 221 U. S. 229, "The surface owners of the soil, owners of the gas as well, could not be deprived of the right to reduce it to possession without the taking of private property". See *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393; *Ohio Oil Company* v. *Indiana*, 177 U. S. 209, and *Peterson* v. *Grayce Oil Co.*, 37 S. W. (2d) 367 (Tex.).

Twelfth.

The Corporation Commission, in making the rules, regulations and proration orders complained of, acted in a legislative and administrative capacity, and although an appeal is allowed by the Curtailment Act to the State Supreme Court, that court cannot exercise legislative powers (*In re County Commissioners*, 22 Okla. 435, 5th paragraph of the syllabus by the court: *Atchison, Topeka and Santa Fe Railway Co.* v. *State*, 28 Okla. 797; *St. Louis and San Francisco Ry. Co.* v. *State*, 28 Okla. 802; *Shawnee Gas & Electric Co.* v. *State*, 31 Okla. 505). The appellant had the right to invoke the jurisdiction of some court to test the validity of the Curtailment Act and the Corporation Commission's rules, regulations and proration orders thereunder and in exercising that right had the privi-

lege to elect to go into the United States Court without first appealing to the State Supreme Court. The case falls completely within the rule announced in *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 200; *Pacific Tel. & Tel. Co.* v. *Cushman*, 292 Fed. 930, and *Oklahoma Natural Gas Co.* v. *Russell*, 261 U. S. 290.

We respectfully submit that this Court has jurisdiction.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Counsel for Appellant.

This 19th day of November, 1931, receipt of a copy of appellant's statement disclosing the basis on which it contends this Court has jurisdiction to review on appeal the decree of the court below (Section 1 of this Court's rule 12) is hereby acknowledged.

J. BERRY KING,
Attorney General of the State of Oklahoma;
JESSE L. BALLARD,
Asst. Atty.-Gen.;
E. S. RATLIFF,
J. H. MILEY,
W. P. Z. GEIMON,
Associate Counsel for Appellees.
CHAS. WEST,
Counsel for the Governor of the State of Oklahoma.

APPENDIX "A."

House Bill No. 168, Chapter 38, Session Laws Oklahoma, 1915, Page 28.

Sections 7954 *to* 7963, *Inclusive, Oklahoma Compiled Statutes,* 1921.

An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground, and conferring authority on the Corporation Commission prescribing the penalty for the violation of this Act, and declaring an emergency.

Be it enacted by the people of the State of Oklahoma:

Waste Prohibited.

SECTION 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

Production and Sale Regulated—Corporation Commission.

SECTION 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and market-

ing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

Waste Defined—Protection.

SECTION 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

Production Regulated—Discrimination of Purchaser Prohibited.

SECTION 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply,

within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Wells Gauged—Governor to Consent.

SECTION 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

Enforcement of Act—Hearings Before Corporation Commission.

SECTION 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including in-

spection and punishment for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

Appeals to Supreme Court—Effect on Orders.

SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

Penalty for Violation.

SECTION 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

State May Secure Receiver—Extent and Manner.

SECTION 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent

jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

Validity of Relative Sections of Act.

SECTION 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

Emergency.

SECTION 11. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved February 11, 1915.

APPENDIX B.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 485.

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL., *Appellees.*

Appellant's Definite Statement of Points Upon Which it Relies, Submitted in Accordance With Section 9 of This Court's Rule 13.

Appellant relies upon the following points:

First: The Oklahoma Corporation Commission's rules, regulations and proration orders (hereinafter

referred to as orders) attached to appellant's Third Amended and Supplemental Bill and contained in Plaintiff's Exhibit 33, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the Constitution of the United States, and although an appeal therefrom is allowed to the Oklahoma Supreme Court by the Legislative Act involved in this case, nevertheless, as that court is without legislative power and can not be vested with such power by the Legislature, the appellant had the right to invoke the jurisdiction of the United States District Court to enjoin the enforcement of said orders without appealing first therefrom to the State Supreme Court.

Second. The prohibitions of the Fourteenth Amendment to the Constitution of the United States are addressed to individuals acting as officers and agents of the State and as such may be enjoined by the Federal Court from using the power of their office to deny to any person the rights guaranteed by the Fourteenth Amendment to the National Constitution.

Third. The said orders of the Corporation Commission of the State of Oklahoma (hereinafter called Commission) being legislative in their nature, are laws within the meaning of the Constitution of the United States and the Acts of Congress regulating Federal Court jurisdiction.

Fourth. Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915 (1915 Session Laws, 28, being Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes, 1921), hereinafter referred to as the Curtailment Act, undertakes to authorize the Commission to fix the price of crude oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Section 2 of the Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. If Section 2 of the said Act is separable and unconstitutional, then the meaning of Section 3 and/or Section 4 thereof must be gathered from Section 2 within the rule that an unconstitutional part of a law may be considered in ascertaining the intent of the Legislature in the remaining parts of the law, and by the application of this rule it is clear that the Curtailment Act is a price-fixing statute attempting to authorize the Commission to regulate and control prices to be paid and received for crude oil in the carrying on of a private business.

Seventh. If Section 2 of the Curtailment Act is separable and the remaining sections, or parts thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Eighth. Without Section 2 of the Curtailment Act the remaining sections (particularly 3 and 4) are too vague, uncertain and indefinite to authorize the Commission to make the orders shown by Plaintiff's Exhibit 33 in so far as said orders go beyond the prevention of physical waste.

Ninth. Appellant's ownership of lands in fee and/or oil leaseholds thereon with the attendant production of crude oil therefrom and the manufacture of gasoline and other refined products from crude oil produced by it, is not a public or quasi public business subject to such regulations as the Curtailment Act imposes.

Tenth. The Curtailment Act is in violation of the Fourteenth Amendment to the Constitution of the United States in that it denies the appellant the liberty of contract as defined by this Court in *Allgeyer* v. *State of Louisiana,* 165 U. S. 578, and other decisions.

Eleventh. The aforesaid orders of the Commission restrict and burden interstate commerce in violation of the Commerce Clause of Section 8 of Article I of the Constitution of the United States.

Twelfth. The Commission, in making each of the orders complained of, exceeded the powers conferred or attempted to be conferred upon it by the said Curtailment Act.

Thirteenth. The appellant's right to drill and take the natural flow of crude oil from its lands and/or oil leaseholds and thereafter devote the same to a useful purpose without physical waste is a vested property right protected by the Fourteenth Amendment to the Constitution of the United States and not subject to restraint or suppression by Act of the State Legislature or orders of the Commission.

Fourteenth. The Commission's rules complained of are unreasonably discriminatory against appellant and other producers of crude oil in what is known in the record as the Oklahoma City Oil Field in that they, without any reasonable basis therefor, restrict the production of crude oil in the Oklahoma City Field to a much less percentage of the potential capacity of the wells than allowed by the rules to be produced in the Seminole Oil Field and other oil fields in Oklahoma, and are therefore in conflict with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. Assuming the Curtailment Act is valid, nevertheless it has been and is being construed and

administered by the Commission in such a manner as to make its operation a taking of appellant's property without that due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Sixteenth. Without Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged each oil well (sought to be prorated) for the purpose of determining its production, the provisions of Section 4 of the Act would be unconstitutional in that that section vests in the Commission unlimited and unrestrained arbitrary power and discretion over appellant's property and others similarly situated, (*a*) in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, (*b*) deprives the appellant of its liberty of contract, and (*c*) equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Seventeenth. The gauge of each producing well in the Oklahoma City Oil Field as well as in the other prorated oil fields in Oklahoma required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make any order or orders specifying the volume of crude oil each well shall be permitted to produce.

Eighteenth. A legal gauge of the wells in the Oklahoma City Field, Seminole and/or other prorated oil fields in Oklahoma has not been made by the Commission or under its orders and directions and without such gauge the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

Nineteenth. The Curtailment Act is not self-executing and the State Legislature having made no appro-

priations at any time for the payment of the expenses of gauging the wells and the salaries of agents of the Commission, all gauges of wells are illegal and void and the Commission's rules are ineffectual.

Twentieth. Gauges made in accordance with the Commission's orders permitting the operator to gauge his own wells in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators' Committee and Umpire, are void in that private and non-official parties were permitted to determine the basis (potential production) for the proration of markets and the allowable production from the entire field in which all operators, including appellant, are interested and materially affected.

Twenty-first. The Legislature is without power to delegate authority to the Commission to create the office of Umpire and prescribe the qualifications therefor and duties thereof and allow payment of the Umpires' salaries by the beneficiaries of the acts of the Umpires, and if Section 5 of the Act is construed to vest that authority in the Commission it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Constitution of the State of Oklahoma.

Twenty-second. The Commission is without authority to delegate to Umpires any jurisdiction of a discretionary nature and all orders designed to vest any such powers in Umpires are void.

Twenty-third. The payment of salaries of Umpires by the Operators' Committee (a non-official organization), collected by said Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma, and/or the operation of pipe lines and/or refineries within Oklahoma, is against public policy and vitiates all gauges of the wells and so far contaminates the Commission's orders as to render

them unenforceable in so far as they undertake to restrain the production of crude oil in Oklahoma without actual waste.

Twenty-fourth. Under Section 1 of Article 15 of the Oklahoma Constitution and Sections 126 and 1561 et al. of the Oklahoma Compiled Statutes, 1921, the taking and subscribing to an oath of office was a condition precedent to the umpires becoming *de facto* or *de jure* officers, and no such oath of office having been taken and subscribed by such umpires, their action in the premises was a misdemeanor and all their acts, including gauging the wells, are *ipso facto* void.

Twenty-fifth. Gauges made under the supervision of the umpires are illegal and void for the reason that the appointment and tenure of office of each umpire was and is against public policy.

Twenty-sixth. The appellant's petition for rehearing filed in the court below should have been granted as the evidence available thereon would have developed facts and events incident to military rule taking place after the decree of the court below was announced showing the Executive Department of the State Government construes the Curtailment Act as a price-fixing statute and enforces it as such.

Respectfully submitted,

HORACE G. McKEEVER,
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GEO. S. RAMSEY,
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